

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO
Eastern Division

HODELL-NATCO INDUSTRIES, INC.)	CASE NO. 1:08 CV 2755
)	
Plaintiff,)	JUDGE: LESLEY WELLS
)	MAGISTRATE JUDGE: GREG WHITE
-vs.-)	
)	
SAP AMERICA, INC., et al.)	
)	
Defendants.)	

PLAINTIFF HODELL-NATCO INDUSTRIES, INC.'S MOTION FOR LEAVE TO
FILE SURREPLY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiff Hodell-Natco Industries, Inc., by and through undersigned counsel, requests leave of this Court to file a Surreply in opposition to the Motion to Dismiss filed by Defendants SAP America, Inc. and SAP AG (ECF #36) and in opposition to the SAP Defendants' Reply Brief in support of their Motion to Dismiss (ECF #41) on or before September 2, 2009.

Hodell submits that good cause exists for the filing of this Motion. As this Court is aware, SAP has filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6). In ruling upon such motions, it is well understood that all allegations in the complaint are presumed to be true and inferences are to be resolved in the plaintiff's favor in resolving a motion to dismiss. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 166 L.Ed.2d 929 (2007). Notwithstanding this long-standing rule, the SAP Defendants' Reply Brief is fraught with factual representations and allegations that proceed well beyond the pleadings, and in some instances, expressly contradict the

pleadings. SAP goes so far as to suggest that the Court may wish to treat its Motion as a Rule 56 Motion for Summary Judgment. *See* SAP Rep. Br., p. 2, fn. 2. Hodell requests leave of this Court to submit a Surreply to address the factual inaccuracies contained in SAP's Reply Brief insofar as they contradict or proceed beyond the pleadings.

Second, Hodell requests leave to submit a Surreply to address the new legal arguments raised in SAP's Reply Brief, which are either raised for the first time in SAP's Reply or wrongfully re-applied from its original Motion.

Hodell submits that leave to file the requested Surreply is warranted in the interests of justice, especially given that SAP's Reply Brief is virtually equal in length and scope to its original Motion to Dismiss. Hodell submits that it should have equal opportunity to demonstrate the legal and factual shortcomings of SAP's Motion, and present why Hodell's claims should not be tossed out of Court even before discovery has commenced. Hodell will keep its Surreply short, and contain it only to the areas of SAP's Reply Brief addressed herein.

Respectfully submitted,

/s/ P. Wesley Lambert

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2009, a copy of the foregoing was filed electronically. Parties may access this filing through the Court's electronic filing system.

/s/ P. Wesley Lambert

P. WESLEY LAMBERT (0076961)